

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GIOVANNI SORIA,

Plaintiff,

-v.-

9:04-CV-0727
(DNH)(GJD)

ROY A. GIRDICH, Superintendent Upstate Correctional
Facility; DEPUTY LACLAIR; CAPT. BEZIO; C.O. FULTON;
C.O. TAYLOR,

Defendants.

APPEARANCES:

GIOVANNI SORIA
03-A-4508
Plaintiff, *pro se*

HON. ELIOT SPITZER
Office of the Attorney General
State of New York
Department of Law
The Capitol
Albany, NY 12224

MARIA MORAN, Esq.
Assistant Attorney General

GUSTAVE J. DIBIANCO, U.S. MAGISTRATE JUDGE

ORDER

Presently before the Court is a Motion by Defendants to preclude Plaintiff from presenting certain evidence in this action due to his failure to comply with the prior Order of this Court directing Plaintiff to respond to Defendant's discovery demands. Plaintiff has not responded to this Motion.

A. Background.

On January 30, 2006 Defendants filed a Motion to Compel related to discovery demands served on the Plaintiff on or about November 21, 2005. Dkt. No. 20. These demands included a set of Interrogatories and a Request for Production of Documents.

Id., Exhibit A. On December 28, 2005, after Plaintiff did not respond to the discovery demands, Defendants' counsel wrote Plaintiff, requested a response to the discovery demands, and advised Plaintiff that if he did not respond a Motion to Compel would be filed.¹ (*Id.*, Exhibit C). According to the Motion Plaintiff has failed to respond to the correspondence and the demands served by Defendants' counsel.

By Order dated July 5, 2006, this Court ordered the Plaintiff to serve responses to Defendants' Interrogatories and Requests for Production of Documents on or before August 11, 2006. Dkt. No. 23. The July Order also advised that **"Plaintiff's failure to respond to the Defendants' discovery demands in accordance with this Order may result in his being precluded from offering evidence in support of his claims in this case, or other sanctions imposed by the Court pursuant to Federal Rule of Civil Procedure 37 including dismissal of the action."** *Id.*

B. Motion for Sanctions.

Defendants filed a Motion for Sanctions on September 14, 2006. Dkt. No. 24. The Motion asserts that Plaintiff failed to comply with the July Order. Defendants' counsel states that she has not received any discovery responses from Plaintiff, and she has not received any communication from Plaintiff since the issuance of the July Order. *Id.* Defendants seek dismissal of this action or, in the alternative, an Order of Preclusion. Plaintiff did not respond to this Motion.

Defendants' Motion will be granted. Plaintiff will be precluded from offering any

¹Plaintiff did execute the medical release that was enclosed with the discovery demands, and returned it to Defendants' counsel. Docket No. 20, Exhibit B.

documents sought in Defendants' November 21, 2005 Demand for Documents that he has not produced to the Defendants to date.² Further, Plaintiff will be precluded from offering any evidence with respect to claims, facts or issues that were addressed in Defendants' November 21, 2005 Interrogatories that Plaintiff failed to address.

WHEREFORE, it is hereby

ORDERED, that Defendants' Motion for Sanctions (Dkt. No.24) is GRANTED to the extent that Plaintiff is precluded from offering any document, responsive to Defendants' November 21, 2005 Demands for Documents, that he has not produced to the Defendants to date. Further, Plaintiff will be precluded from offering any evidence with respect to claims, facts, or issues that were addressed in the Defendants' November 21, 2005 Interrogatories. This order is subject to any modification by District Judge Hurd, and it is further

ORDERED, that the dispositive motion filing deadline is reset to **March 5, 2007**, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: December 21, 2006



Hon. Gustave J. DiBianco
U.S. Magistrate Judge

²Plaintiff will not be precluded from offering medical records that were obtainable by Defendants as a result of the medical release Plaintiff executed and returned to Defendants.